THIS IS A MAR 15, 2008 REITERATION OF THE RESPONSE THAT WAS FACSIMILE TRANSMITTED WITH FAX NUMBER 571-273-0025 ON MAR 12, 2008 TO THE OFFICE OF PETITIONS, AND NOT YET ENTERED ON MAR 15, 2008 IN CASE TRANSACTION HISTORY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Number: 6,505,391 B1
Patent Date: 2003 Jan 14
Applicant: Philippe Berna
Patent Title: PROCESS FOR MAKING A VERSATILE CLAMPING DEVICE DESIGNED TO HOLD OBJECTS WITHOUT DAMAGING THEM, SUCH A DEVICE AND ITS USE.
Examiner/GAU: David Bryant/3726

Molières-sur-Cèze, France, 2008, March 12, Wen

REQUEST FOR RECONSIDERATION TO THE DECISION OF JANUARY 17, 2008 ON THE RESPONSE TO THE DECISION ON THE PETITION FILED ON JULY 11, 2003.

Outstanding decision of Senior Petitions Attorney Nancy Johnson mailed January 17, 2008 on response dated September 03, 2007 to decision mailed July 19, 2007 on petition filed July 11, 2003

Hon. Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Sir:

Petitioner acknowledges reception of the dismissal decision on the September 03, 2007 request for reconsideration of petition filed July 11, 2003, decision based on post June 8, 1995 rules.

It would seem that Senior Petitions Attorney Nancy Johnson would be unaware of some relevant cases of US common law.

In re United States v. Winstar Corp. et al. (95-865), 518 U.S. 839 (1996) before the Supreme Court of the United States, in re Centex Corp. v. United States, 395 F.3d 1283 (Fed. Cir. 2005) and in re First Heights Bank, FSB v. United States, 422 F.3d 1311 (Fed. Cir. 2005) before the United States Court of Appeals for the Federal Circuit, actually in all "Winstar" cases, it has been clearly demonstrated that the United States could not pretext a new Act voted by the Congress, such as the FIRREA or the Guarini Amendment, which were enacted respectively in 1989 and 1993 as was the URAA in 1994, to disallow parties from the benefits of a previous implied contract, unless paying them heavy damages.

This is consistent with article I, section 10 of the U.S. Constitution.

In petitioner's case, there is between patentee and United States a sturdy implied contract, which is composed both by pamphlets published by the US Patent and Trademarks and by the Law in force at the time patentee filed his patent application on September 3, 1992. Please refer to pages 24-25 of the pamphlet, which was in vigor in 1992, as a "General Information Concerning Patents – a brief introduction to patent matters- " published by the U.S. Department of Commerce – Patent and Trademark Office – in 1984. And please refer to page L-13 of July

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1989 version of U.S.C. title 35 and please refer to page L-14 of November 1992 version of U.S.C. title 35. In these documents, the patent term from the patent issuance is plainly 17 years, independently of the number and the kind of continuation applications to file as to reach said issuance, independently of the competence and the good faith of the Examiners assigned to the examination, and independently of the delays caused by clerk errors, delays that were numerous for the petitioner's case, as it was reminded in the text of the petition filed on July 11, 2003. Besides no exception, but payment of fees, was made to the mention of the seventeen years term.

Such a patent term policy was fair as patent examiners have unequal competence and goodwill and as clerks can make unexpected mistakes that may extend notably patent examination and handling phases, as history of the petitioner's case examination showed it. Patentees cannot be held as responsible for these particularities.

The PTO gave no information but obscure one to the patentee by the date the policy on patent term determination changed. Patentee would have liked to be conspicuously noticed in advance that from this date, on the contrary to the past, patent term became dependent on the number and on the kind of continuation applications and substitutes.

Damages would be easy enough to be assessed in the petitioner's case.

If the PTO would maintain his stand at depriving patentee of 9 years out of 17 for the duration of patent 6,505,391 B1 from issuance, at an estimated average of 2 millions dollars a year for the loss of monopoly on the US market at selling clamps according to that patent, that would make 18 millions dollars as minimum damages that patentee would claim for breach of contract. This evaluation does not take into account the time spent at investigating and preparing petition and requests for reconsideration to get fair treatment, time accordingly not spent at marketing efficiently those clamps during the first 8 years and possible attorneys fees.

In view of what it precedes, a request for reconsideration of petition filed July 11, 2003 is respectfully submitted,

Philippe BERNA

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence of two pages including this one is being facsimile transmitted to the U.S. Patent and Trademark Office (Attn: Office of Commissioner for Patents, with fax number 571-273-0125) on 03/15/2008.

Printed name of person signing this certificate: Philippe Berna

Philippe BERNA

Signature: